

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, July 23, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEBERS IN ATTENDANCE: Jon Carlson, Roger Larson, Dan Marvin, Greg Schwinn, Mary Bills-Strand and Tommy Taylor (Steve Duvall, Gerry Krieser and Cecil Steward absent); Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Becky Horner, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order. He introduced and welcomed new Commission member, Dan Marvin.

Schwinn then requested a motion approving the minutes for the regular meeting held July 9, 2003. Motion for approval made by Bills-Strand, seconded by Taylor and carried 6-0: Carlson, Larson, Marvin, Schwinn, Bills-Strand and Taylor voting 'yes'; Duvall, Krieser and Steward absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

July 23, 2003

Members present: Carlson, Larson, Marvin, Schwinn, Bills-Strand and Taylor; Duvall, Krieser and Steward absent.

The Consent Agenda consisted of the following item: **SPECIAL PERMIT NO. 2026.**

Larson moved to approve the Consent Agenda, seconded by Bills-Strand and carried 6-0: Carlson, Larson, Marvin, Schwinn, Bills-Strand and Taylor voting 'yes'; Duvall, Krieser and Steward absent.

Note: This is final action on Special Permit No. 2026, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 3414
FROM P PUBLIC USE TO O-3 OFFICE PARK
and
USE PERMIT NO. 152
FOR 49,900 SQ. FT. OF FINANCIAL, MEDICAL
AND OFFICE FLOOR AREA,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 13TH STREET AND PIONEERS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 23, 2003

Members present: Larson, Bills-Strand, Taylor, Marvin, Carlson and Schwinn; Duvall, Krieser and Steward absent.

Planning staff recommendation: Deferral.

Ex Parte Communications: None.

Brian Will of Planning staff submitted a letter from the applicant requesting a two-week deferral to allow opportunity to modify the legal notice to include additional waiver requests.

Bills-Strand moved to defer, with continued public hearing and administrative action scheduled for August 6, 2003, seconded by Taylor and carried 6-0: Larson, Bills-Strand, Taylor, Marvin, Carlson and Schwinn voting 'yes'; Duvall, Krieser and Steward absent.

SPECIAL PERMIT NO. 1123B
AN AMENDMENT TO THE PEOPLE'S CITY MISSION HOME
TO EXPAND THE BOUNDARY AND
TO WAIVE THE FRONT YARD SETBACK REQUIREMENTS,
ON PROPERTY GENERALLY LOCATED AT
NO. 1ST STREET AND "R" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 23, 2003

Members present: Larson, Bills-Strand, Taylor, Marvin, Carlson and Schwinn; Duvall, Krieser and Steward absent.

Planning staff recommendation: Conditional approval.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted a letter received from the Army Corps of Engineers indicating that a site visit was performed, finding that there are no permitting requirements, and that they do not object to this request.

Proponents

1. Michael Bott, 1540 So. 70th Street, the architect for the applicant, accepted the conditions of approval as set forth in the staff report, except Conditions #1.3, #1.4 and #1.5, referring to the landscape plan, an outdoor recreation plan and site drainage. Since most of this site is being held for future development which has not yet been determined, Bott suggested that the Mission does not want to do a landscape plan; however, they will do landscaping around the existing building that will be put into use right away.

Carlson noted that the existing building is not flood-proofed. Bott responded that it is basically an existing building that is three feet below the 100 year floodplain. The building does not lend itself to floodproofing. It is a metal building and you would be basically building a moat around it with a movable gate or raising it up and this is not feasible. The Mission believes they can have people move to the main building in the event of a flood coming.

2. Ron Buchinsky, of The People's City Mission, submitted a brochure developed for the expansion for the men's shelter. The intent and desire is to move the high risk homeless across the street to this facility. This is going to free up some space in the existing shelter to house men who have completed an intense rehabilitation program and provide housing for them. The Mission does see the need to develop an emergency contingency plan in the event Salt Creek should rise – they would want to immediately move those men over to the facility across the street at 110 Q. Significant portions of the building have been expanded, so within 5 minutes they could relocate every resident from the men's shelter into the emergency shelter. He agreed that it is proper for The Mission to have a formal contingency plan, but as it stands now, they could move 60 individuals across the street into the existing dining room until the water is abated and not skip a beat in services.

Marvin inquired as to whether the area has ever been under water. Buchinski was not aware of any time that it had been under water. It is in the 100-year floodplain so they do not anticipate action very often. Bott commented that being in a 100-year floodplain and Salt Creek having the watershed area it does, it does rise slowly -- we are talking about days or at least 8-10 hours -- so there is not going to be a quick flood there. They will have plenty of time to move. Bott suspects that the area might have been wet back in 1953.

Carlson confirmed that the building exists and they are not taking out flood storage. Bott stated that the Mission will invest funds to remodel an existing warehouse and it is no longer on septic.

There was no testimony in opposition.

Staff questions

Schwinn asked staff to respond to the condition regarding the landscape plan. Horner agreed that Conditions #1.3 and #1.4 could be moved from “site specific” to a requirement “before receiving building permits”, i.e. Conditions #3.3 and #3.4. At the time they come in for building permit, the staff would only be reviewing for parking lot screening, and Horner is the one who reviews those landscape plans.

Buff Baker of Public Works confirmed that they had talked with the applicant about the drainage plan on the overall site and that was the reason for the comment and Condition #1.5. The discussions included this lot and three other lots. Public Works does not object to letting this portion go forward like it is.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 23, 2003

Taylor moved approval, with conditions, with amendment moving Condition #1.3 and #1.4 to #3.3 and #3.4, seconded by Bills-Strand and carried 6-0: Larson, Bills-Strand, Taylor, Marvin, Carlson and Schwinn voting ‘yes’; Duvall, Krieser and Steward absent.

SPECIAL PERMIT NO. 2028

FOR AUTHORITY TO SELL ALCOHOLIC BEVERAGES

FOR CONSUMPTION ON THE PREMISES,

ON PROPERTY GENERALLY LOCATED AT

SOUTH 48TH STREET AND VAN DORN STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 23, 2003

Members present: Larson, Bills-Strand, Taylor, Marvin, Carlson and Schwinn; Duvall, Krieser and Steward absent.

Staff recommendation: Denial.

Ex Parte Communications: None

Proponents

1. Darrell Stock, 1115 K Street, #104, attorney for the applicant, presented the application and commented on the staff recommendation of denial. He noted that the staff has conceded that there is mitigation provided, but suggests that the use still could create a “significant disturbance” to the peace and enjoyment of the residential property. Stock does not know what a “significant disturbance” is. He submitted that there is neither a significant risk of disturbance nor is there a risk of a significant disturbance as a result of this change in use.

JAX Liquor has been on this corner for 35 years, selling package liquors. At one time there was a stand alone building which was torn down in 1991, and JAX became part of the shopping center that was built there. For 30 some years, they have already been dispensing alcoholic beverages as off-sale at this site. With the proliferation of the grocery stores and convenience stores selling package liquor, the “Mom and Pop” liquor stores are basically done. In order to try to continue in business, Mr. Podolak is requesting this change and wants to be able to run a small neighborhood bar at this location. This is going to be a very small place, with a maximum estimate of 60-70 people, but Stock does not believe this would occur very often.

Stock then showed photographs and described the mitigation around the site. Looking southwest is a 13' cement wall, a chain link fence and a 6' privacy fence, so the south and west corners of the property are part of the division between the residential and the commercial neighborhood. There are no openings on the south side of the premises—only a cement wall. Thus, Stock submitted that there is no “significant disturbance” emitting from the south wall. Looking southwest, the fence runs all the way to basically the front edge of the property and there is a wall along the south side. Anyone around this property basically has to go to the front of the property in order to get in or out of the premises. There are parking spaces off to the south and west side, but there is no practical reason they would be used. These spaces are required by ordinance for this type of shopping center.

Stock exhibited that no one standing at the first house on the west would know this facility existed. Immediately south across Van Dorn is a commercial building of law offices and accountant offices.

On the back side of the property looking north and northwest, the pictures showed a delivery truck for the other stores and the wall and fencing continues on to the north, again isolating this commercial center. The front of the store is on the east side and the store is only 20' wide. There is only one door for ingress and egress to the west side that will be closed at all times. The only other door is the front door. Anyone coming or going from the premises is going to have to go straight south to go around because of the fence.

Stock stressed that it would be very difficult to isolate a premises any more than this is isolated. He is convinced that it is mitigation because simply no one can get to or from these premises without injuring themselves except to come around to the front of the building. There will be no significantly large crowds. They will not be drawing college students to this location.

With regard to the recommendation of denial, Stock pointed out that the Police report states that their denial is based on footage. There is no mention in the Police report about any concern about disturbances. There is hardly a “concentration of licenses” here – the closest would be Parkway Lanes. Stock does not foresee there being any significant conflicts between the two. The next closest would be the El Toro across the street in the other shopping center. There is not going to be a significant concentration of people that are bar hopping. The intent is to have a neighborhood bar for people to socialize. There are no plans

for live music, other than maybe a guitarist once in awhile. There will not be the risk of a significant disturbance. For that matter, Stock suggested that a mere disturbance would be drowned out by the traffic on 48th Street. Had there not been notices sent out to the neighbors, Stock believes this change could have occurred and no one would have known that anything different was going on. In fact, he believes the traffic will decrease.

Bills-Strand observed that the ordinance requires a 100' separation from residential uses. And, the ordinance may take the furthest back part of the property for this measurement. However, she pointed out that the closest residence from the front door would be 140'-145'. Stock concurred. He believes the chances of any disturbance are very remote.

Schwinn referred to Condition #2.2, which requires that the lighting shall be designed and erected in accordance with all applicable lighting regulations and requirements. He asked whether the applicant foresees any change in the existing lighting. Stock stated that the lighting was done in 1991 when the shopping center was approved. He suggests that they would have had to meet the lighting standards at that time, thus he does not know what this condition is about. As far as he knows, the liquor store meets the current requirements for lighting.

Opposition

1. Ramona Maske, 4630 Van Dorn, the house directly west of the subject use, testified in opposition. Her home is 61 to 66 feet away from a business that is going to be open until 1:00 a.m. It can get very noisy on numerous occasions. Children come running in like mad to get food from the neighborhood restaurants. There are little neighborhood kids in the area with mothers coming up and down the street with strollers. There are many things that could occur because of this business being there. Her bedroom windows are right to the east. Even now, it is a problem to sleep with the bedroom windows open. There are little children living in the same block. She does not object to new business, but she does not want to have a bar next to her house because of resale value, living conditions, safety, etc.

2. Harvey Maske, 4630 Van Dorn, testified in opposition. He has lived there for 46 ½ years. Traffic has been a problem with trucks barreling through in the daytime. The big refrigeration trucks are very noisy. The Wonder Bread truck shows up about 4:30 a.m., then the garbage trucks, and then delivery trucks come into the businesses. This goes on all day long until 3 or 4 o'clock in the afternoon. Then the bar will start getting customers in the late afternoon and on until 1:00 a.m. He believes this use will increase the opportunity for crimes and disturbances. He believes that many of the neighbors are opposed.

3. Wally Martin, 4633 Eden Circle, testified in opposition. She agreed with the Maske's. This will affect the peace and quiet in the neighborhood. There is a walkway between Eden Circle and 46th Street that leads south to Eden Pool. This walk is very close. The children are there. Eden Park is there. There is already quite a bit of traffic on this walkway from the shopping center. It happens late at night and we are getting some detracting from peace and

enjoyment of the neighborhood now. With a bar, that can only increase. She does not want the litter, the noise, the accidents, and drunken drivers. She bought her property because it was a lovely neighborhood near a pool, schools and shopping. It is important to keep the neighborhood feel to the area. She believes this is important to all of the neighbors.

4. Carol Snyder, who owns the property at 4620 and 4622 Van Dorn, testified in opposition. Her property is next door to the Maske's. The applicant indicates there will be only one entrance. What about fire? Don't they have to have front and rear exits? Where will they put the other door for safety, and doesn't that bring it within the 100'? Her daughter was hit on her bicycle going down 48th & Van Dorn. There are a lot of children in the neighborhood going to and from the pool and schools. This use may increase the incidents of accidents happening if people are consuming alcohol that close to their property.

Staff questions

Bills-Strand understands that the 100' separation requirement from residential is being reviewed and might possibly be changed in the future, such as measuring from the front door, etc. Brian Will of Planning staff acknowledged that there have been some meetings over the past eight months on that issue, with discussions about potential changes to the ordinance; however, nothing is in place at this time.

Brian Will also requested to amend the conditions of approval relating to the parking requirements. There is a reference in the staff report that the proposal exceeds the parking requirement; however, for both the applicant and staff benefit, staff would suggest that prior to forwarding this application to the City Council, the applicant submit a revised site plan that confirms that all required parking is provided. This is now a requirement before building permit, but the staff would prefer it be done now before it is scheduled on the City Council agenda.

Carlson inquired whether that changes the staff's recommendation. Will indicated that it does not. The staff is still recommending denial.

Marvin inquired about the spacing at the bowling alley because it appears to be similarly situated. Will did not know, except that it appears to be within 100' of residential uses, but it probably pre-existed the ordinance and is grandfathered.

Response by the Applicant

Stock stated, "We're here because of the HyVee's and the Super Savers" and he believes it is ironical. He does sympathize with the neighbors because he would not want to live close to a corner that contains both a Burger King and a McDonald's. This neighborhood bar is not going to change what happens on that corner. All accesses to this property are by arterials. He believes this business will have the least impact on anyone around it. The noise is already there because of the arterial streets. There is already commercial activity going on. This use

will not affect that at all. There is going to be no noticeable difference with a business of this size and the few people that will be coming in from Van Dorn and from 48th Street. He does not believe the neighbors will ever even know they are there. There will be a fire door, but they will not be letting people go out this door unless there is a fire.

Larson inquired about the status of the off-sale license. Stock indicated that the off-sale has already been closed. The Class D has already been surrendered. They have received approval for the Class C. All they are waiting for now is to be able to show the Liquor Commission that they have the necessary occupancy permits and this special permit.

Bills-Strand pointed out that Wendy's, Burger King and McDonald's are open pretty late. Stock does not believe that this neighborhood bar will be frequented by students and young adults. It will be a neighborhood bar and most of the patrons are not young adults. Bills-Strand empathizes with the neighbors but it seems like there are a lot of other noisy businesses around that attract teenagers, etc.

Based upon the number of Commissioners present, Schwinn inquired whether the applicant would prefer to move forward with a recommendation of denial rather than being held over for two weeks. Stock stated that they would prefer to take a recommendation of approval to the City Council, but a two week delay would be problematic. Eugene Podolak stated that the city dropped the ball on this and they were not aware they needed this special permit until they were at the City Council seeking approval of the liquor license.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 23, 2003

Larson moved approval, with conditions as amended by staff, seconded by Bills-Strand.

If he was a residential neighbor to this site, Larson would prefer on-sale to off-sale. On-sale will mean that no package is taken out, no beer cans taken out, etc., and he believes the traffic will decrease rather than increase. He did a site visit and is convinced that there is a real separation--it is a huge wall behind there. He believes this is actually an improvement.

Bills-Strand concurred. Her business is next door to an on-sale, and it does eliminate some of the litter. She believes that on-sale is so much quieter than the off-sale.

Schwinn stated that he will support the motion. Historically, the community he grew up in had neighborhood bars and he felt they were a fabric of the neighborhood and helped strengthen the neighborhood. There is a Brewsky's in his neighborhood now and there is never excess traffic or large crowds in the parking lot. He thinks there is a use for neighborhood bars. The Library Lounge on 70th & A is also very quiet and it is just as close to residential as this will be. He believes this is a good use. It is a hard edge on the corner and it always will be.

Carlson shared his opinion that generically, in a planning sense, you can create a mixed use with a neighborhood bar and restaurants that serve alcohol. However, talking about this specific application, the Planning staff is recommending denial and the adjacent property owners are not satisfied so he will not support it.

Marvin stated that he will vote against the permit. He believes the application needs to comply with the spacing requirements until those requirements are changed. There may be a grandfathered use down the street, but if we start picking and choosing we make the rule unenforceable.

Taylor is going to vote against this because there is a reason for the 100' requirement. He takes the neighborhood concerns into consideration. He does not want to fail to acknowledge the concerns of the people that will be most directly affected. What happens in one neighborhood is not necessarily going to happen in another neighborhood. He does not believe we want to bypass or ignore the concerns of the neighbors that are affected.

Schwinn pointed out that the Police Department's job is to say no based on the spacing requirements. The rule is 100' and they have to say no. He also pointed out, however, that the Police Department report does not say one word about violations from this owner. The fact of the matter is that the Police Department cannot pick and choose because of the distance requirements. "Yes, three neighbors came down but 99 didn't come down." We didn't get any letters; we didn't get any emails. Everyone else had the same opportunity to comment.

Carlson believes that the Planning professionals do make an analysis of the site to make a recommendation.

Motion for approval, with conditions, as amended by staff, **failed** 3-3: Larson, Bills-Strand and Schwinn voting 'yes'; Taylor, Marvin and Carlson voting 'no'; Duvall, Krieser and Steward absent.

Carlson moved denial, seconded by Bills-Strand, "to move the application forward". Motion to **deny** **carried** 5-1: Bills-Strand, Taylor, Marvin, Carlson and Schwinn voting 'yes'; Larson voting 'no'; Duvall, Krieser and Steward absent.

SPECIAL PERMIT NO. 2029,
S.W. 1ST APARTMENTS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT WEST "A" STREET AND S.W. 1ST STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 23, 2003

Members present: Larson, Bills-Strand, Taylor, Marvin, Carlson and Schwinn; Duvall, Krieser and Steward absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None

Greg Czaplewski of Planning staff submitted proposed additional conditions of approval:

- 1.3 Provide a conservation easement for the protection of the existing trees in the northern portion of the site.
- 1.4 Receive a Section 404 permit from the Army Corps of Engineers or a letter stating that a Section 404 permit is not required.

Both of these amendments have been presented to the applicant.

Proponents

1. Brian Carstens appeared on behalf of the applicant. This is a community unit plan for 30 dwelling units in a two-story building on S.W. 1st and West “A”. There is a large tree mass to the north which is being preserved except for some parking area. They are basically reshaping the ground for the parking lot so there will be no fill brought in. Carstens agreed with the staff conditions and the additional conditions submitted today. The building will be broken into two separate buildings.

Carstens requested that Condition #1.1.8 be deleted, which requires that the building be relocated to be at least 300' from an industrial use south of West A Street. Carstens acknowledged that the property to the south is zoned I-1; however, he is not aware of anything in the ordinance that requires the 300' distance. He believes it is a requirement desired by the Health Department. If this 300' distance is required, it will require them to reconfigure the site, putting the building lower and closer to the neighborhood.

Carlson inquired whether there is any additional flood storage engineering going on at this site, i.e. compensatory cut and fill. Carstens advised that they have received a floodplain fill permit to fill the building pad. Building & Safety did not require a 404 permit at that time. They have not started the fill so they will get that worked out ahead of time. Carstens believes they would have to dig a detention cell. There is 4' of fill on the south end and 6' to 7' on the north end. They are not adding any fill for the parking lot.

There was no testimony in opposition.

Carlson referred to page F79 of the Comprehensive Plan, which states that, “Subject to the findings of the Mayor’s Floodplain Task Force and the assumptions used in crafting this Plan, future urban development will be outside of the floodplain and floodway. This helps new development avoid potential flood risks and preserves the important functions of the floodplain.” Carlson noted that this entire parcel is located in the floodplain, so he believes this proposal runs counter to the building principles of the Comprehensive Plan. The Floodplain Task Force findings have been released to the public.

Marvin Krout, Director of Planning, acknowledged that to be a goal in the Comprehensive Plan. The Task Force report is completed. Copies have not been provided to Planning Commission, but a briefing on the Task Force recommendations has been scheduled for 12:00 Noon on August 20th. The report does recommend that in areas that are considered developed areas (as in this area), filling would be permitted but subject to some new stricter requirements about compensatory storage and no loss of conveyance, and that the effect of the fill can only have a more limited effect on other property upstream or downstream. Nicole Fleck-Tooze of Public Works was contacted about this special permit and whether it would be appropriate to make those requirements. It is a small tract and it will be difficult in these developed floodplain areas to provide compensatory storage and still reclaim some of the land. It may take some joint efforts or public efforts to better accomplish that than to require each developer to do it themselves. This tract does have parking in the lower area so Krout believes the developer has been somewhat sensitive in terms of location for the pad for the building and the parking. In summary, Krout stated that staff did ask the question, and it didn't seem appropriate in this particular case. The policy issue and any changes to the ordinance have yet to come to the Planning Commission and the City Council.

Carlson understands where we are today and he respects that. But he did want to take this opportunity to at least publicly point that out and offer his encouragement to make those findings public and furthering the public debate and the public bodies to craft the ordinance.

With regard to the applicant's request to delete Condition #1.1.8, Czaplewski stated that it would be the Planning staff recommendation to retain that condition. It was put in at the request of Health Dept. Czaplewski agreed there is no current industrial use south of this property but it is zoned industrial and there is potential for an industrial use. As an alternative, Czaplewski offered a two-week deferral to get more information from the Health Department or arrange for them to attend the next meeting.

Marvin inquired as to whether this property has been under water in the last 30-40-50 years. Buff Baker of Public Works stated that his best guess would be 1953. Nicole Fleck-Tooze of Public Works offered that this area is part of what is included in the Salt Creek levy system so it has not seen a 100-year flood event.

Response by the Applicant

Carstens pointed out that the developer will be granting a conservation easement on the northern portion of the creek. They could pull the trees out and dig a hole, but he thinks the trees would be preferable. He reiterated his request to delete Condition #`1.1.8.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 23, 2003

Taylor moved to defer two weeks. Motion failed for lack of a second.

Bills-Strand moved approval, with conditions, adding Condition #1.3 and #1.4 as requested by staff, and deleting Condition #1.1.8, as requested by the applicant, seconded by Larson and carried 6-0: Larson, Bills-Strand, Taylor, Marvin, Carlson and Schwinn voting 'yes'; Duvall, Krieser and Steward absent.

At this point in the meeting, Chair Schwinn appointed Jon Carlson as temporary chair, in the absence of the Vice-Chair, so that he could leave the meeting.

FINAL PLAT NO. 03014,
HANNAN ADDITION,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 66TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 23, 2003

Members present: Larson, Bills-Strand, Taylor, Marvin, and Carlson; Duvall, Krieser, Schwinn and Steward absent.

Staff recommendation: Denial.

Ex Parte Communications: None

Proponents

1. Brian Carstens appeared on behalf of the **Hannan's**. In February, they brought forward a request to waive the sidewalks and streets trees on Pine Lake Road. They are attempting to carve a three-acre lot into 2 acres for the existing house and 1.5 acres for a future residential lot. This had originally been submitted as an administrative final plat to create these two lots. When it was originally created in the 1980's, access was relinquished to Pine Lake Road. They are now showing that access easement on the final plat. Public Works continues to recommend that there be no access on Pine Lake Road, so this is the appeal of the administrative final plat to the Planning Commission and City Council to grant that access that was previously relinquished.

Carstens suggested that when Pine Lake Road is widened, it would be the desire that the Jehovah's Witnesses church would work with the Hannan's to collocate a joint driveway to provide access to their parking lot and to the new single family lot. Carstens believes the city could force the issue with the church in the future. The sureties for the sidewalks and street

trees along 66th Street have been posted as well as for the water main improvements. Hannan is willing to pay his portion for the 1.5 lanes of Pine Lake Road that will be improved in front of that new lot.

Carstens advised that they did look at putting another private roadway over to 66th Street to provide access and frontage for Lot 2, but it would run in front of the house, which would make it difficult to sell the house. Mr. Hannan is trying to sell the home now and they have been working on this for a year.

Carstens submitted a letter from Mark Hunzeker suggesting that the applicant "...is willing to have this subdivision conditional upon his agreement that the proposed access to Pine Lake Road be restricted to one single-family dwelling, and that the access be consolidated at the common property line with the Jehovah's Witness Church at such time as Pine Lake Road is widened to 4 lanes." Carlson inquired whether this contingency situation is reflected on the final plat documents, i.e. "...when Pine Lake Road is widened to four lanes." Carstens stated that he would have no objection to adding that into the subdivision agreement.

There was no testimony in opposition.

Staff questions

Carlson inquired about the potential for such a contingency condition. Is there opportunity to consolidate the access? Buff Baker of Public Works believes that to be what they discussed with the applicant -- that the joint access at the church location would be acceptable. The original plat did relinquish access to that lot and that was Public Work's point. As long as we are not increasing driveways onto the future Pine Lake Road, Public Works would be happy with that.

Marvin Krout, Director of Planning, stated that he visited with Mark Hunzeker yesterday. At that time, he thought there were conditions of approval attached to this final plat. He understands the concept and it is a concept that the city has used when there are two different properties owners along a street to consolidate driveways over time, making each one agree to cooperate. The problem is that when you have the city in the position of trying to force the owners to cooperate as part of a street widening process, when the city is acquiring land and paying damages, it is possible for the city to make this happen in the future, but because we don't have the church signed on the dotted line, it probably means that down the road there will be extra cost for the city to try to make this happen. It is a compromise solution. It is better than not having this property owner's agreement, but it still leaves the city with some potential for uncertainty and future costs.

Carlson posed the scenario: If this access is denied, and at such time as the church rebuilds and they come up with a private agreement, would this applicant have to do any further city process to create a common access? Krout believes they would have to refile. If the property owner was able to obtain access, the city would be in a position to process an administrative

final plat. Ray Hill of Planning staff added that if this access is denied, and sometime in the future they are able to work out an agreement to share a driveway, they could then reapply for another administrative final plat. At that time, the staff could see that it meets the criteria of sharing the driveway and it could be approved administratively.

Bills-Strand wondered whether the plat could be approved contingent upon them finding an alternative. Hill does not know what that would accomplish. They would not be able to do anything with the lot because it does not have any access. Each piece of property needs to have access to a public street. The original subdivision creating the one lot relinquished all access to Pine Lake Road based upon the fact that Pine Lake Road was a major street. The city likes to keep the number of intersections to a minimum on a major street. If they can come up with a shared driveway, that would be acceptable, but they have not been able to do that. Possibly this should be placed on pending until they have it worked out with the church.

Response by the Applicant

Carstens stated that the church is a moot issue. "We're stuck and that is why we are here." The house will not sell with a private roadway in front of it unless it is at a much lesser value.

Vic Hannan, 6900 So. 66th, advised the Commission that he spoke to the Elders of the church, which is governed by their headquarters, and they will not allow the church to grant an easement or share driveways. He did make an offer to buy an easement and it is not possible to do. Hannan has been trying to do this for a year. The plat meets all of the requirements except for the access.

Carlson was confused then by Mr. Hunzeker's letter because Hannan suggests that there is not a possibility to consolidate with the church. Hannan reiterated that in his discussions with the Elders of the church, there is no possibility that they can be allowed by their parent church to enter into any agreements for accesses onto their property.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 23, 2003

Bills-Strand moved approval, with access onto Pine Lake Road, seconded by Larson.

Bills-Strand drives this area all of the time and there are plenty of driveways going onto Pine Lake Road, with the Christian Youth group across the street having access and numerous residences across the road with access. She realizes that we asked them to give that access up, but it's a huge lot. If the church is not going to cooperate, she hates to deny someone the ability to put in another residence.

Larson pointed out that there is no other opportunity for access to any street. You can't get to 70th or 66th. Carlson noted that getting to 66th would require a road in front of the existing

home. Bills-Strand thinks it makes sense to make an exception, even though they previously gave up that access. She does not want to add the condition proposed in Mr. Hunzeker's letter because she does not want to cost the city money down the road for damages.

Marvin pointed out that there are about 5 driveways across the road just in the photograph.

Motion for approval failed 3-2: Larson, Bills-Strand and Marvin voting 'yes'; Taylor and Carlson voting 'no'; Duvall, Krieser, Schwinn and Steward absent. This application is held over, with continued public hearing and administrative action scheduled for August 6, 2003.

COMPREHENSIVE PLAN AMENDMENT NO. 03004

**TO ADOPT THE SOUTHEAST UPPER SALT CREEK
WATERSHED MASTER PLAN AND TO AMEND THE
LAND USE PLAN TO DESIGNATE LAND AS GREEN SPACE OR
AGRICULTURAL STREAM CORRIDOR ALONG THE
100 YEAR FLOOD PRONE CORRIDOR.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 23, 2003

Members present: Larson, Bills-Strand, Taylor, Marvin, and Carlson; Duvall, Krieser, Schwinn and Steward absent.

Staff recommendation: Approval, as revised.

Ex Parte Communications: None

Proponents

1. Steve Henrichsen of Planning staff submitted two letters in support.

2. Nicole Fleck-Tooze of Public Works submitted a work-in-progress draft of some revised text for the executive summary and requested a two-week deferral to continue some discussion and negotiation with landowners within the basin. They have reached agreement on a number of items and she believes they are getting closer to a resolution. The additional information also includes revisions proposed by Mark Hunzeker on behalf of the landowners and they are in the process of working out some of the final issues in the draft language.

Nicole Fleck-Tooze then outlined the approach that is being attempted. The watershed master plan, as originally brought forward in May, identified two potential alternative approaches: #1 was Concept A, which generally proposed preservation of the 100-year floodplain, and #2 was Concept B, which proposed the preservation of land near a corridor with some additional detention. The executive summary talked about implementing Concept A because it preserved the 100-year floodplain and there was less cost than Concept B. Since then, the staff has had continued discussion with landowners to come up with another alternative, which is being called Concept C, which is composed of some criteria that would

allow for some encroachment into the 100-year floodplain if the impacts are offset by certain measures. If there is encroachment into the 100-year floodplain, there are three major areas that must be addressed: flood storage and conveyance; impacts to water quality; and impacts to stream stability. In June, the staff presented a memo outlining this concept. The text submitted today outlines some more specific criteria to provide a comfort level about the expectations in meeting this standard. The staff and the landowners agreed yesterday to request a two-week deferral to work out the remaining issues.

Bills-Strand moved to defer, with continued public hearing and administrative action on August 6, 2003, seconded by Taylor and carried 5-0: Larson, Taylor, Marvin, Carlson and Schwinn voting 'yes'; Duvall, Krieser, Schwinn and Steward absent.

Public Testimony

1. Steve Larrick, 920 So. 8th Street, resident of South Salt Creek neighborhood for over 25 years, stated that when he moved to the neighborhood, it was safe and outside of the 100-year floodplain, and Salt Creek was within the banks of the levy in a 100-year rain. But, since new development has come to Lincoln, the neighborhood is now in the 40-year floodplain and he wonders how much further we want to go in threatening neighborhoods in lower lying areas of the city. Developers have had too much reign in building in the floodplain. The water goes right into the older areas. It will flood the Haymarket, South Bottoms and North Bottoms. South Salt Creek has been ignored completely. We need to do more and do the most we can to protect the Salt Creek floodplain. Larrick encouraged that Concept A be adopted. The strictest possible measures to try to protect Salt Creek are needed today and for future generations. Larrick serves on the NRD and they are trying to find ways to reduce the threat of flooding -- it is very expensive and very difficult. If we give an inch, the developers will take a mile. We need to allow green space where there is good potential of flooding. There are 400 homes in South Salt Creek. We need more retention to protect the areas that are wilderness and not fill them up with fill and development.

There being no further business, the meeting was adjourned at 2:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 6, 2003.